

**PROPOSED AMENDMENTS
TO THE
CALIFORNIA CODE OF REGULATIONS
TITLE 23, WATERS
DIVISION 3, STATE WATER RESOURCES CONTROL BOARD
CHAPTER 18, PETROLEUM UNDERGROUND STORAGE TANK
CLEANUP FUND REGULATIONS**

INITIAL STATEMENT OF REASONS

JANUARY 2000

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS**

CHAPTER 18. PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND REGULATIONS

In proposing the amendments to the Petroleum Underground Storage Tank Cleanup Fund's (Fund) regulations, the State Water Resources Control Board (SWRCB) relied on three precedential orders: (1) SWRCB Order WQ 93-2-UST, *In the Matter of the Petition of Bruno Scherrer Corporation*; (2) SWRCB Order WQ 96-04-UST, *In the Matter of the Petition of Champion/LBS Associates Development Co.*; and (3) SWRCB Order WQ 98-05-UST, *In the Matter of the Petition of Cupertino Electric, Inc.* The amendments which rely on these orders are specified herein. The SWRCB did not rely on technical, theoretical, or empirical studies, reports, or similar documents in proposing these amendments.

The proposed amendments do not mandate the use of specific technologies or equipment.

No alternatives would be more or equally effective in carrying out the purpose for which the proposed regulations are intended or less burdensome to affected persons. The SWRCB did not consider any alternatives to the proposed regulations. The SWRCB did not consider any alternatives that would lessen any adverse impact on small business.

The SWRCB has determined that the proposed amended regulations will not have a significant adverse economic impact on business. The purposes of the Fund are to provide (1) a mechanism for owners and operators of petroleum underground storage tanks (UST) to meet federal financial responsibility requirements; (2) financial relief to owners and operators by reimbursing certain costs of cleaning up petroleum contamination resulting from leaking USTs; and (3) incentive for persons owning and operating USTs to comply with applicable laws by reimbursing only those persons who have complied with UST laws. Thus, the current Fund regulations provide assistance to owners and operators of USTs and do not have a significant adverse economic impact on business. The proposed amendments will continue to provide this assistance to owners and operators and will not have a significant adverse economic impact on business.

The proposed amendments do not unnecessarily duplicate or conflict with federal law or federal regulations. The SWRCB does not propose to adopt regulations inconsistent with those contained in the Code of Federal Regulations.

The SWRCB has proposed certain changes to the regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (i.e., changes without regulatory effect). These changes without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, grammar, or punctuation, or renumbering or relocating regulatory provisions. In many cases, the SWRCB has explained these changes in the statement of reasons to avoid any confusion with the substantive revisions. However, to the extent that many of the changes without regulatory effect are nonsubstantive and their purpose is self-evident and merely editorial they are not discussed herein. For example, changes without regulatory effect that are not discussed further herein include:

- changes to revise punctuation;

- changes to alter regulations written in the passive voice to the active voice;
- changes to the section headings that are intended to better identify the section's contents;
- changes to comply with the citation styles used in the California Style Manual (3d ed. 1986);
- changes to correct statutory references and authority;
- changes made for grammatical purposes; and
- changes to provide more complete and correct statutory citations.

Unless otherwise indicated, the article and section numbers contained herein refer to the regulations as proposed.

CHAPTER 18 (GENERALLY)

1. RESIDENTIAL TANKS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

In many cases, the existing regulations apply to both residential tanks and USTs. Existing regulations, however, often refer solely to USTs, even though the regulations also may be applicable to residential tanks. The existing regulations in chapter 18 need to be revised to specify whether the provisions are applicable to USTs, residential tanks, or both.

Specific Purpose and Necessity of the Proposed Regulation

The proposed revisions specify whether the regulations in chapter 18 are applicable to USTs, residential tanks, or both. These revisions are made in accordance with chapter 6.75 of the Health and Safety Code.

2. REGULATORY TECHNICAL ASSISTANCE

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Health and Safety Code sections 25299.57 and 25299.58 provide for the reimbursement of a Fund claimant's eligible corrective action and third party compensation costs. Senate Bill 562 (Stats. 1996, Ch. 611) amended the Health and Safety Code to also include the costs of regulatory technical assistance as costs eligible for reimbursement from the Fund. (Health & Saf. Code § 25299.57, subd. (j).) Senate Bill 665 (Stats. 1999, ch. 328), took effect on January 1, 2000, defines regulatory technical assistance and places certain limitations on the SWRCB's ability to reimburse a claimant for regulatory technical assistance. The existing regulations do not reflect these amendments to the governing statute.

Specific Purpose and Necessity of the Proposed Regulation

The proposed revisions throughout chapter 18 include regulatory technical assistance costs as a reimbursable cost pursuant to Health and Safety Code section 25299.57, subdivision (j). These revisions are necessary to make the regulations consistent with the governing statute.

ARTICLE 1. GENERAL PROVISIONS

SECTION 2803. APPLICABILITY

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2803(e)** - The SWRCB has proposed regulations establishing the procedures for a claimant's request for review of a staff decision by the Fund Manager in article 5. The existing regulation does not reflect the proposed amendments to article 5.
2. **Section 2803(f)** - Senate Bill 562 added Health and Safety Code section 25299.39.2, subdivision (b), which allows an owner or operator of a UST who believes that the corrective action plan for the UST site has been satisfactorily implemented, but where closure has not been granted, to petition for site closure. Senate Bill 665 further clarified the petition process. The SWRCB has proposed regulations setting forth procedures for closure petitions in article 6. The existing regulation does not reflect the newly proposed article 6.

Specific Purpose and Necessity of the Proposed Regulation

1. **Section 2803(e)** - The regulations in article 5 have been revised to set forth and clarify procedures for requesting review of a staff decision from the Fund Manager, appealing a staff decision or a Fund Manager Decision to the Division Chief, and for petitioning the SWRCB for review of a decision made by the Division Chief. It is necessary to amend this subdivision to reflect the proposed changes in article 5.
 2. **Section 2803(f)** - In accordance with Health and Safety Code section 25299.39.2, subdivision (b), the SWRCB has proposed procedures in article 6 for an owner or operator of a UST or other responsible party to petition the SWRCB for review of a regulatory agency's decision not to close a UST site. It is necessary to amend this subdivision to reflect the proposed changes in article 6.
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ARTICLE 2. DEFINITION OF TERMS

SECTION 2804. DEFINITIONS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **“Accident”** - The existing definition defines an “accident” as “an unintentional and unexpected event or happening.” A “happening” is defined in the dictionary as an “event” and thus, is surplusage. (American Heritage Dictionary (2nd. college ed. 1985) p. 593.)
 2. **“Claim”** - Health and Safety Code section 25299.13 defines “claim” as “any demand in writing for a certain sum.” This definition of “claim” has been interpreted to have more than one meaning (e.g. a claim for damages in a lawsuit).
 3. **“CFR”** - This term is not used in the regulations.
 4. **“De facto owner”** - This term is used in the existing regulatory definition of “owner,” but it does not have a meaning generally familiar to those affected by the Fund regulations and is not defined in the governing statute.
 5. **“Designated Representative”** - The existing definition has two meanings, which can lead to confusion among persons affected by the Fund regulations.
 6. **“Environmental Services”** - This term is not used in the regulations.
 7. **“Initial site investigation”** - This term is used in the definition of “occurrence.” This term is not defined in the governing statute and does not have a generally familiar meaning to those affected by the Fund regulations.
 8. **“Occurrence”** - Senate Bill 562 amended Health and Safety Code section 25299.19, which defines “occurrence.” The existing regulation is not consistent with the statutory amendment.
 9. **“Person”** - Health and Safety Code section 25299.25 refers to section 25281 for the definition of “person.” Health and Safety Code section 25281 includes a limited liability company and the United States. The existing regulatory definition, however, does not include a limited liability company and the United States.
 10. **“Petroleum”** - Health and Safety Code section 25299.22 defines the term by identifying the laboratory conditions that crude oil fractions must meet in order to satisfy the definition of “petroleum.” The existing regulatory definition repeats the statutory definition without providing the public any guidance as to what substances constitute petroleum.
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11. **“Regulatory technical assistance”** - Senate Bill 562 amended the Health and Safety Code to include the costs of regulatory technical assistance as costs eligible for reimbursement from the Fund. (Health & Saf. Code § 25299.57, subd. (j).) Senate Bill 665 defined regulatory technical assistance. (Health & Saf. Code § 25299.57, subd. (j)(2).) For ease of reference, the statutory definition needs to be incorporated into the Fund regulations and clarified in the context of those regulations so the term provides sufficient guidance to Fund claimants.
 12. **“Residential tank”** - The existing definition is confusing to claimants. The definition also needs to be revised so that it more accurately incorporates the statutory requirements for a residential tank contained in Health and Safety Code section 25299.54, subdivision (e).
 13. **“Site”** - Senate Bill 562 added a definition of “site” in Health and Safety Code section 25299.23.1 that has not been incorporated into the existing regulations. Senate Bill 665 expanded upon the definition of “site” contained in the Health and Safety Code. The statutory definition needs to be incorporated into the Fund regulations and harmonized so it is clear that the definition applies to underground storage tanks and residential tanks.
 14. **“Small business”** - Health and Safety Code section 25299.52, subdivision (b)(2)(A), has been amended to eliminate the requirement that a business must be domiciled or have its principal office in California in order to qualify as a small business. The existing definition is not consistent with this statutory amendment.
 15. **“SWEEPS”** - This program is no longer in existence.
 16. **“Third party”** - Under existing regulations it is unclear whether current or former tenants or landlords of the UST site are included within the meaning of the term.
 17. **“Third party compensation”** - The existing definition may confuse owners or operators about the requirements necessary to submit a third party claim to the Fund. Further, the existing definition could be construed to allow an owner or operator to submit a claim for third party compensation, when the owner or operator is under no obligation to pay the third party unless the Fund reimburses the owner or operator.
 18. **“Unauthorized release”** - This definition needs to be revised so that it is consistent with the definition in Health and Safety Code section 25281.
 19. **“Underground storage tank”** - The existing regulatory definition creates ambiguity because it only specifically excludes from the definition of USTs those tanks specifically exempted by section 2621 of the Code of Regulations (implementing Chapter 6.7 of the Health and Safety Code). By implication, if section 2621 does not exempt a category of tank, the tank category could be eligible for reimbursement from the Fund. However, certain types of tanks are not specifically exempted by Chapter 6.7, but are also not federal USTs (e.g., (i) tanks containing more than 1,100 gallons of heating oil and located
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at a business, factory, or school, or (ii) tanks containing less than 1,100 gallons of motor fuel located at a farm and used for noncommercial, nonagricultural purposes).

Specific Purpose and Necessity of the Proposed Regulation

1. **“Accident”** - The proposed regulation defines an accident as an unintentional and unexpected event, and deletes the phrase “or happening” to remove the surplusage.
 2. **“Claim”** - The proposed regulation clarifies that a claim is a written request for payment of costs eligible for reimbursement from the Fund. The governing statute requires the SWRCB to pay an owner’s or operator’s claim for reimbursement from the Fund. (See e.g., Health & Saf. Code §§ 25299.54, 25299.57, 25299.58.) Thus, the Legislature intended the term “claim” to refer to claims for reimbursement from the Fund. The proposed regulation clarifies that intention and eliminates any confusion regarding the term.
 3. **“CFR”** - This acronym has been deleted because it is not used in the regulations, and therefore, is unnecessary.
 4. **“De facto owner”** - The proposed regulation defines a de facto owner as the owner of real property who has actual possession of and control over a UST that is located on the property and that has been abandoned by its legal owner and operator. The definition is consistent with the SWRCB’s decision in SWRCB Order WQ 93-2-UST, *In the Matter of the Petition of Bruno Scherrer Corporation*. In that decision, the SWRCB determined that a de facto owner is an “owner” for purposes of Fund eligibility and outlined the circumstances under which a person may be considered to be a de facto owner of a UST. The SWRCB’s conclusions are incorporated into the proposed regulation.
 5. **“Designated Representative”** - The reference to any person designated by the SWRCB has been deleted in the proposed amendment. This change is necessary to clarify the more common meaning of the term that is in the regulations.
 6. **“Environmental Services”** - This term has been deleted because it is not used in the regulations, and therefore, is unnecessary.
 7. **“Initial site investigation”** - The proposed regulation has been defined to mean a soil and groundwater investigation sufficient to identify where contamination resulting from an unauthorized release is most likely to be present. Typically, this will mean a soil and water investigation as described in California Code of Regulations, title 23, division 3, chapter 16, article 11. This change is necessary to clarify the meaning of the term.
 8. **“Occurrence”** - The definition has been amended so that it is consistent with Health and Safety Code section 25299.19.
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9. **“Person”** - The definition has been amended to include a limited liability company and the United States within the definition of a “person.” This change will ensure that the definition is consistent with the definition in Health and Safety Code section 25281.
 10. **“Petroleum”** - The definition has been amended to identify common substances that meet the definition of “petroleum,” thereby making the definition more meaningful to the public. The amendment has also been amended to clarify that petroleum substances formulated with additives fall within the definition of “petroleum.” The revised definition comports with existing SWRCB precedent and the federal definition of petroleum upon which the statutory definition is based.
 11. **“Regulatory technical assistance”** - Regulatory technical assistance is a reimbursable cost pursuant to Health and Safety Code section 25299.57, subdivision (j). Certain limitations are placed on regulatory technical assistance in Health and Safety Code section 25299.57, subdivision (j)(2). The proposed regulation tracks the statutory limitation by defining regulatory technical assistance to mean assistance from a person other than the claimant in the preparation and submission of a claim to the Fund. The regulatory definition further explains that regulatory technical assistance includes assistance with completing and submitting the Fund’s claim application, reimbursement requests and supporting documentation, and complying with procurement requirements. Consistent with the statutory definition, regulatory technical assistance does not include the cost to seek review of a Fund staff decision by the Division Chief or petitioning to the SWRCB for site closure. Regulatory technical assistance is not intended to include negotiations with a regulatory agency over site closure or cleanup requirements. The SWRCB believes such negotiations more properly fall under the existing reimbursable costs for corrective action.
 12. **“Residential tank”** - This definition has been revised to clarify and more accurately reflect the statutory requirements for a residential tank contained in Health and Safety Code section 25299.54, subdivision (e).
 13. **“Site”** - Consistent with Health and Safety Code section 25299.23.1 as effective January 1, 2000, the proposed regulation defines “site” to mean a parcel of real property at which an underground storage tank is located. The proposed regulation expands upon the statutory definition to clarify that “site” includes a parcel of real property where a residential tank is located. The regulation also incorporates the statute’s provision that when tanks on adjacent real property parcels share a common operator, the parcels, if under common ownership, are treated as one site.
 14. **“Small business”** - This definition has been revised to reflect the change made to Health and Safety Code section 25299.52, subdivision (b)(2)(A), which eliminated the requirement that a business must be domiciled or have its principal office in California in order to qualify as a small business. Also, portions of the definition that duplicate Government Code section 14837 have been deleted. This amendment is necessary to avoid unnecessary duplication with the Government Code and so that the regulation will be consistent with the governing statute.
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15. **“SWEEPS”** - This term has been deleted because the program is no longer in existence, and therefore, the term is unnecessary.
16. **“Third party”** - The existing definition excludes tenants or landlords of the UST site. This definition has been revised to state that neither current nor former tenants or landlords of the site are included within the meaning of third party. This amendment is necessary to clarify who may be considered a third party for Fund purposes.
17. **“Third party compensation”** - The definition has been revised to clarify that an owner or operator may only submit a third party compensation claim for costs the owner or operator is legally obligated to pay a third party. The owner or operator must be obligated to pay the third party regardless of whether the Fund reimburses the owner or operator. The revised definition effects Health and Safety Code section 25299.58’s requirement that an owner or operator be ordered to pay.
18. **“Unauthorized release”** - This term has been revised so that it is consistent with the definition in Health and Safety Code section 25281.
19. **“Underground storage tank”** - This term has been rewritten to resolve any ambiguity in its meaning and to ensure that the definition remains in conformance with the Health and Safety Code, the Code of Regulations, and the Federal Act. The rewritten definition replicates the exact wording contained in Chapter 6.75 of the Health and Safety Code. The definition contained in Health and Safety Code section 25299.24 specifies that only those tanks that meet the Federal Act’s definition of petroleum USTs are eligible for reimbursement from the Fund. By repeating the definition from section 25299.24 of the Health and Safety Code, the rewritten regulation reiterates the need for a tank to meet the federal definition of petroleum UST in order to be eligible for reimbursement from the Fund.

ARTICLE 3. FINANCIAL RESPONSIBILITY REQUIREMENTS

ARTICLE 3 (GENERALLY)

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The references to owners and operators in the existing article do not conform to the language of the Federal Act (see e.g., section 2807).

Specific Purpose and Necessity of the Proposed Regulations

The proposed revision replaces the conjunction “and” with “or” throughout this article to conform to the language of the Federal Act.

SECTION 2806.1. CURRENT FEDERAL COMPLIANCE DATES

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Section 2806.1, subdivision (a) needs to be revised to eliminate the confusion regarding the applicable date of compliance with federal financial responsibility requirements when the owner and operator are separate persons.

Specific Purpose and Necessity of the Proposed Regulation

This subdivision will clarify that the compliance date is determined by the characteristics of the owner. This revision is consistent with the federal requirements contained in 40 Code of Federal Regulations, section 280.91.

SECTION 2806.2. DEMONSTRATION OF COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS BY OWNERS AND OPERATORS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations are organized in a manner that can make them difficult to understand. For example, certain sections or subdivisions, which logically belong together, are arranged with dissimilar sections or subdivisions.

Specific Purpose and Necessity of the Proposed Regulation

This new section concerning the demonstration of compliance with financial responsibility requirements by owners and operators has been moved from section 2808.2 for organizational purposes, and rewritten for greater clarity.

SECTION 2807. REQUIRED FINANCIAL RESPONSIBILITY AMOUNTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Section 2807(f) - The existing regulation is unclear whether the required financial responsibility coverage limits the liability of the owner or operator.

Specific Purpose and Necessity of the Proposed Regulations

Section 2807(f) - The subdivision has been added, in conformity with the Federal Act as defined in section 2804, to clarify that the required financial responsibility coverage does not in any way limit the liability of the owner or operator.

SECTION 2808.1. DEMONSTRATION OF COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS BY OWNERS AND OPERATORS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Existing section 2808.1, subdivision (b), unnecessarily duplicates statutory language contained in Health and Safety Code section 25299.32, subdivision (d).

Specific Purpose and Necessity of the Proposed Regulations

The existing subdivision has been deleted to avoid unnecessarily duplicating the governing statute.

EXISTING SECTION 2808.2. DEMONSTRATION OF COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS BY OWNERS AND OPERATORS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations are organized in a manner that can make them difficult to follow. For example, certain sections or subdivisions, which logically belong together, are arranged with dissimilar sections or subdivisions.

Specific Purpose and Necessity of the Proposed Regulations

The existing section concerning the demonstration of compliance with financial responsibility requirements by owners and operators has been moved to section 2806.2 for organizational purposes.

PROPOSED SECTION 2808.2. FUND COVERAGE

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Existing section 2808.3 needs to be renumbered to section 2808.2. The existing section 2808.3 subdivisions (b)-(d) unnecessarily duplicate existing section 2808.1, subdivision (a)(1), which sets forth the required minimum financial responsibility amounts.

In addition, Senate Bill 989 (Stats. 1999, Ch. 812) expanded the Fund by directing the SWRCB to reimburse up to an additional \$500,000 per occurrence for costs incurred by a claimant pursuant to Health and Safety Code section 25299.57 (governing corrective action costs and regulatory technical assistance costs). The additional \$500,000 must be incorporated into the regulation indicating Fund coverage.

Specific Purpose and Necessity of the Proposed Regulations

The existing section 2808.3 has been renumbered to section 2808.2. The proposed revision deletes the existing section 2808.3 subdivisions (b)-(d) which set forth the applicable financial responsibility requirements. These requirements are already set forth in section 2808.1, subdivision (a)(1), and are unnecessarily duplicated in this section.

Modifying the regulations to specify the additional \$500,000 of Fund coverage available for corrective action and regulatory technical assistance costs for each occurrence is necessary so the regulations do not conflict with the Health and Safety Code.

SECTION 2809.1. RECORDKEEPING

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulation is unclear whether a chief financial officer's letter must be maintained in addition to the certification of financial responsibility.

Specific Purpose and Necessity of the Proposed Regulations

Section 2809.1, subdivision (b) has been revised to clarify that a chief financial officer's letter must be maintained in addition to the certification of financial responsibility, which is required in subdivision (c).

ARTICLE 4. THE FUND

GENERAL REORGANIZATION OF ARTICLE 4 AND REVISIONS MADE FOR CLARITY

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations are organized in a manner that can be confusing. Specifically, certain sections or subdivisions, which logically belong together, are arranged with dissimilar sections or subdivisions. For example, sections beginning with number 2810 generally contain eligibility requirements applicable to claims and claimants. The existing section 2810.2, however, contains provisions concerning the ineligibility of costs which are generally addressed in section 2812.2. The regulations need to be better organized so that they are easier to follow.

In addition, the language contained in the existing regulations is often overly complex, and the provisions are duplicative or unnecessarily wordy.

Specific Purpose and Necessity of the Proposed Regulations

The proposed revisions to the regulations group similar topics together. The SWRCB intends these revisions to better organize the regulations, and thus make them easier to follow for persons who must comply with them.

In addition, the regulations have been rewritten for clarity. The SWRCB has proposed these revisions to eliminate unnecessary complexity and to set forth the provisions in concise, plain English.

The regulations in article 4 that have been revised solely for purposes of organization and clarity are listed immediately below. The SWRCB intends these revisions to be without regulatory effect.

The proposed regulations that contain provisions with substantive changes, or provisions with both substantive changes and changes without regulatory effect, are discussed in detail in the statement of reasons for that specific regulation.

1. **Section 2810.2** - The current provision regarding the ineligibility of costs incurred prior to January 1, 1988, has been moved to sections 2812.2, subdivision (e)(18) (corrective action costs) and 2812.2, subdivision (f) (third party compensation costs) for organizational purposes.
 2. **Section 2810.3** - The current provision regarding the ineligibility of costs due to intentional or reckless acts has been moved to section 2812.4 for organizational purposes, and rewritten for clarity.
 3. **Section 2811** - The section regarding permitting and other eligibility requirements has been rewritten for clarity.
 4. **Section 2811.1(b)** - The provision in this subdivision concerning priority class assignment for joint claims has been moved from section 2810, subdivision (b). The subdivision has been rewritten for clarity.
 5. **Section 2811.2** - The section concerning claim application requirements has been rewritten for clarity. To eliminate unnecessary duplication, the list of eligibility requirements that claimants must certify that they have met, which were contained in subdivisions (j)-(l), has been replaced with a reference to section 2811, which contains the eligibility requirements.
 6. **Section 2812(f)** - The provision regarding payment of costs has been moved from section 2812.7 for organizational purposes, and rewritten to eliminate duplicative language and for clarity.
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7. **Section 2812(h)** - The provision concerning a claimant's responsibility to repay any overpayments within 20 days, has been moved from section 2812.3, subdivision (d) for organizational purposes.
8. **Section 2812.1(f)** - The provision concerning acceptable corrective action work has been moved to section 2812.2, subdivision (b) for organizational purposes.
9. **Section 2812.2(a)** - The subdivision's reference to regulatory or local agency oversight costs has been moved to section 2812.2, subdivision (d) for organizational purposes.
10. **Section 2812.2(b)** - This provision, which states that corrective action work must be acceptable to the appropriate regulatory agency, has been moved from the original section 2812.1, subdivision (f) for organizational purposes. The text in the original subdivision, which discusses double payment, has been deleted because it was moved to section 2812.3.
11. **Section 2812.2(d)** - The original text of this subdivision, which lists costs ineligible for reimbursement from the Fund, has been moved to section 2812.2, subdivision (e). The proposed subdivision, which refers to regulatory agency oversight costs, has been moved from section 2812.2, subdivision (a).
12. **Section 2812.2(e)(18)** - The language regarding the ineligibility of corrective action costs incurred before January 1, 1988 has been moved from section 2810.2 to this section.
13. **Section 2812.4** - The provision regarding the ineligibility of costs caused by intentional or reckless acts has been moved from section 2810.3 and rewritten for clarity. The original section regarding verification of claims has been moved to section 2812.6. The original section 2812.3, subdivision (d) has been moved to section 2812, subdivision (h).
14. **Section 2812.6** - The original section regarding disqualification of claims has been moved to section 2812.8. The section regarding verification of claims has been moved from section 2812.4.
15. **Section 2812.7** - The original language concerning the payment of costs has been rewritten to eliminate duplicative language and for clarity, and moved to section 2812, subdivision (f). The language concerning the submission and receipt of claims has been moved from section 2812.5.

SECTION 2810. TYPES OF CLAIMS PERMITTED

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2810(a)(3)** - The existing regulation states that a claim for pre-approval is a permissible type of a claim against the Fund. The governing statute, however, only allows claims for corrective action, third party compensation, and regulatory technical
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assistance costs. Pre-approval is a process, not a type of claim. Thus, the provision regarding pre-approval needs to be moved to a more appropriate section.

2. **Section 2810(b)** - The existing regulations are unclear whether a separate claim must be submitted for each occurrence. In addition, the existing regulation addresses placement on the priority class. This provision should be moved to the section that addresses that subject.

Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2810(a)(3)** - The original provision in subdivision (a)(3) concerning pre-approval of estimated corrective action costs has been deleted because pre-approval of costs, which is provided for in section 2811.4, is not a type of claim against the Fund. In addition, subdivision (a)(3) has been amended pursuant to Health and Safety Code section 25299.57, subdivision (j) to permit claims for regulatory technical assistance costs to be filed against the Fund.
2. **Section 2810(b)** - The original provision in this subdivision regarding priority class assignment for joint claims has been moved to section 2811.1, subdivision (b) for organizational purposes. In addition, pursuant to Health and Safety Code sections 25299.57 and 25299.58, the SWRCB may only reimburse costs of up to \$1 million per occurrence. In keeping with the governing statute, the proposed revision in this subdivision states that a separate claim must be submitted for each occurrence.

SECTION 2810.1. ELIGIBLE CLAIMANTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2810.1(a)(1)-(6)** - Portions of existing subdivision (a) unnecessarily duplicate eligibility requirements contained in section 2811. Additionally, the language of the regulation is overly complex. This subdivision needs to be revised to eliminate redundant requirements and to identify the relevant eligibility requirements in a concise manner.
 2. **Proposed section 2810.1(b)** - Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (k) to allow a person to file a claim against the Fund if (i) the person owns the property on which an unauthorized release occurred, (ii) the release was the subject of corrective action performed and completed by a person eligible for reimbursement from the Fund, and (iii) additional contamination from the same release has been discovered. The existing regulations do not reflect this amendment.
 3. **Section 2810.1(c)-(e)** - Subdivision (b) of the existing regulations precludes a person who acquires real property on which a UST is located from filing a claim against the Fund if the previous owner of the real property was ineligible to file a claim against the Fund. The existing regulation only addresses real property owners and not UST owners or
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operators. Thus, the existing regulation contains a loophole that may allow an ineligible UST owner or operator to create eligibility by transferring operation of the UST.

Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2810.1(a)(1)-(6)** - The proposed revision to subdivision (a) identifies who is eligible to file a claim against the Fund. The proposed revision moves existing subdivision (a)(5), which identifies the owners or operators who may recover third party compensation costs, and subdivision (a)(6), which states that only an owner or operator who has paid or will pay for the costs claimed may file a claim against the Fund, into proposed subdivision (a) for better organization. The proposed revision deletes subdivision (a)(1)-(4) to eliminate unnecessary duplication of eligibility requirements that are contained in section 2811.
2. **Section 2810.1(b)** - The proposed revision allows a person to file a claim against the Fund if (i) he or she owns the property on which an unauthorized release occurred, (ii) the release was the subject of corrective action performed and completed by a person eligible for reimbursement from the Fund, and (iii) additional contamination from the same release has been discovered. This revision has been added to conform with Health and Safety Code section 25299.57, subdivision (k), and is necessary to reflect existing law.
3. **Section 2810.1(c)-(e)** - These subdivisions have been revised and extended from existing subdivision (b) to close loopholes in the existing regulations that may allow an ineligible UST owner or operator to create eligibility by transferring operation of the UST. In addition, these subdivisions have been revised so that the prohibition on acquiring from an ineligible person only renders ineligible the costs that may be attributable to a release originating before the current owner or operator took title or control. The revised regulations, therefore, not only close loopholes, but, by providing a method for claimants to demonstrate that the Fund will not be reimbursing costs attributable to an ineligible person, the regulations provide a more narrowly tailored mechanism to prevent circumvention of the eligibility requirements.

Under existing Federal and California law, both the owner and operator of a UST are responsible for complying with UST laws (including permitting, reporting and corrective action requirements). As a result, if an owner has failed to fulfill a legal obligation for a UST, the UST is in violation of the law and the owner may not be eligible to file a claim. Because the operator has an independent responsibility to comply with the law, if the UST is in violation of the law, the operator is similarly in violation and should not be eligible to file a claim against the Fund. The operator's actions or inactions likewise may also cause the USTs to be in violation of the law, and should render the owner ineligible to file a claim against the Fund.

The revisions specify that if an owner is ineligible, then the operator is ineligible. Aside from reflecting the owner's and operator's independent requirements under the UST laws, the provision also serves to prevent an ineligible owner from simply contracting with another party to operate the UST and to submit a claim to the Fund. Further, because a

series of transactions could be used to isolate the wrongdoer from the person submitting a claim, the proposed regulation reaches backward to past violations of permitting, financial responsibility, and corrective action requirements.

To ameliorate the potential effects of the revisions, subdivisions (c) and (d)(3) specify that the regulation only bars reimbursement of costs that may be attributable to an occurrence that commenced when a previous owner or operator had ownership of or control over the UST. The regulation is, therefore, narrowly tailored to only preclude reimbursement of costs that are attributable to releases commencing when an ineligible person owned or operated the tanks. Subdivision (e) identifies the mechanisms by which a claimant can demonstrate to the SWRCB that the costs are not attributable to a prior occurrence.

SECTION 2811.1. CLAIM PRIORITY CLASSES

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Section 2811.1(a)(3) - Recent amendments to Health and Safety Code section 25299.52, subdivision (b), eliminated the domiciliary requirements for priority class C. The regulation needs to be updated to reflect existing law.

Specific Purpose and Necessity of the Proposed Regulations

Section 2811.1(a)(3) - Pursuant to Health and Safety Code section 25299.52, subdivision (b), the regulation has been revised to eliminate the domiciliary requirements for priority class C. This revision is necessary to reflect existing law.

SECTION 2811.2. CLAIM APPLICATION REQUIREMENTS; CLAIMS FOR CORRECTIVE ACTION COSTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2811.2(f)(1)** - The claim application requirements need to be updated to identify information that is necessary to process a Fund claim. While the existing regulation requires a claimant to identify the former site owner, it does not require the claimant to identify the former UST owner.
 2. **Section 2811.2(g)** - The criteria for placement in a particular priority class are contained in Health and Safety Code section 25299.52, subdivision (b). The existing regulation needs to be updated to identify with greater particularity the documentation a claimant must submit supporting its assignment to a particular priority class.
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Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2811.2(f)(1), (3)** - This subdivision has been revised to require an owner to identify both the former owner of the site and the former owner of the UST that is the subject of the claim. This information is necessary to determine whether or not a claimant has acquired the site from an eligible UST owner.
2. **Section 2811.2(g)** - This subdivision has been revised to identify the documentation a claimant must submit supporting its assignment to a particular priority class. Health and Safety Code section 25299.52, subdivision (b) provides the basis for requiring particular documents.

SECTION 2811.3. CLAIM APPLICATION REQUIREMENTS; THIRD PARTY COMPENSATION CLAIMS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

This section, which sets forth the application requirements for claimants submitting third party compensation claims, does not clearly identify the documents that must be submitted with such claims.

Specific Purpose and Necessity of the Proposed Regulations

The proposed regulation has been revised to describe the documents that must be submitted with greater particularity. Proposed subdivisions (a)-(c) and (e) identify the documents previously required by existing subdivision (a). Proposed subdivision (d) requires a claimant to agree that the SWRCB may conduct an audit of a claim honored by the SWRCB. This agreement is already required for claims for corrective action costs (see existing section 2811.2, subdivision (m)). A claimant often will submit claims for both corrective action costs and third party compensation costs and the proposed revision has been made to ensure that the application requirements for claims for both types of costs are consistent.

SECTION 2811.4. PRE-APPROVAL OF CORRECTIVE ACTION PROPOSALS OR BIDS; ASSISTANCE WITH CONTRACTOR AND CONSULTANT SELECTION

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing provision refers to cost estimates or bids prepared by contractors and consultants. However, this reference is inaccurate because professionals such as registered geologists or engineers prepare proposals, not cost estimates or bids. In addition, subdivision (c) allows the Division to approve estimates or bids as reasonable. Governing law, however, requires costs to be both reasonable and necessary. Senate Bill 665 also allows claimants to challenge the denial of a pre-approval request.

Specific Purpose and Necessity of the Proposed Regulations

The section has been revised to change the phrase “cost estimate or bid” to “proposal or bid,” which is the correct terminology. The proposed revision has been made for accuracy because professionals such as registered geologists or engineers prepare proposals, not cost estimates or bids. In addition, the proposed revisions to subdivision (c) adds the term “and reasonable” to be consistent with governing law. To conform with recently enacted Senate Bill 665, the regulation has been modified to specify that a claimant may petition the SWRCB if the Division disapproves a request for pre-approval or fails to act on a request for pre-approval.

SECTION 2812. GENERAL PROCEDURES FOR REIMBURSEMENT

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2812 (generally)** - The language contained in the existing regulations is often overly complex, and the provisions are unnecessarily duplicative or wordy.
2. **Section 2812(d)** - The existing regulations establish minimum invoice requirements. The regulations require an invoice to include a work description, the date the work was performed, the vendor’s name and address, and the cost amount of the work performed. These minimum requirements often fail to provide sufficient information for Division staff to determine whether the costs incurred are eligible for Fund reimbursement.
3. **Section 2812(g)** - The existing regulations need to be updated to clarify that a claimant is expected to pay its costs within a timely manner.

Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2812 (generally)** - The proposed revisions are intended to eliminate unnecessary complexity and to set forth the provisions in concise, plain English. Unless otherwise indicated in the statement of reasons, these revisions are intended to be without regulatory effect.
 2. **Section 2812(d)** - The proposed revisions to the invoice requirements are intended to provide Division staff with sufficient information when reviewing a reimbursement request. The revisions include identification of the person actually performing the work, and the person’s hourly rate and the hours charged for each task. Further, when costs that are typically considered to be overhead costs are identified as distinct costs on the invoice, then the invoice should contain an explanation why the costs are not overhead costs already included in the billed rate. An invoice for regulatory technical assistance must identify the subject matter of telephone calls or meetings, and the person contacted. This information will enable Division staff to better evaluate the reasonableness and necessity of a claimant’s costs.
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3. **Section 2812(g)** - The proposed regulation requires a claimant, who has received reimbursement from the Fund, to pay the party who performed the work within 30 days or to return the unpaid monies to the SWRCB. By law, the SWRCB may only pay for a claimant's actual costs of corrective action, third party compensation, or regulatory technical assistance. The SWRCB cannot allow Fund monies to be used improperly. Thus, a claimant must make a scheduled payment to a consultant or contractor with funds that were given for that purpose, and the claimant may not keep funds to which it is not entitled. Thirty days is considered to be a reasonable period of time for the claimant to pay its costs.

SECTION 2812.1. COMPLIANCE WITH LAWS; BID REQUIREMENTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulation refers to cost estimates or bids prepared by contractors and consultants. This reference is inaccurate because professionals such as registered geologists or engineers prepare proposals, not cost estimates or bids. The regulation needs to be updated for accuracy.

Specific Purpose and Necessity of the Proposed Regulations

The proposed regulation corrects the incorrect reference to cost estimates or bids prepared by contractors and consultants. The regulation specifies that contractors prepare bids and professional geologists and engineers prepare proposals. In addition, the proposed revisions are intended to eliminate unnecessary complexity, provide better organization, and set forth the provisions in concise, plain English.

SECTION 2812.2. ELIGIBLE AND INELIGIBLE COSTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2812.2(e)(15)** - The existing regulations prohibit the payment of attorneys' fees and other legal costs as costs of corrective action. The SWRCB has determined that this regulation is inconsistent with Health and Safety Code section 25299.57, subdivision (j), which made costs of regulatory technical assistance eligible for reimbursement from the Fund, because it is not unusual for an attorney to assist a claimant with filing a claim against the Fund. Accordingly, the existing regulation needs to be changed to allow reimbursement of an attorney's costs of providing regulatory technical assistance.
 2. **Section 2812.2(e)(15)** - Pursuant to Health and Safety Code section 25299.57, subdivision (j), costs of regulatory technical assistance eligible for reimbursement from the Fund. The proposed definition of regulatory technical assistance includes assistance with obtaining the services of contractors or consultants. The costs of obtaining such
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assistance are ineligible for reimbursement under the existing regulations, and thus, the existing section 2812.2, subdivision (f)(15) is inconsistent with the proposed regulation. This subdivision needs to be updated so that it is consistent with the proposed regulatory definition.

3. **Section 2812.2(e)(16)** - The governing statute and regulations require corrective action costs to be reasonable and necessary. Some claimants, however, undertake corrective action work that is not the most cost-effective alternative to achieve cleanup levels identified as necessary by the regulatory agency. The regulations need to be updated to clarify that the added corrective action costs are ineligible.
4. **Section 2812.2(e)(17)** - The existing regulations are unclear whether costs of corrective incurred to clean up a site beyond the level identified as necessary by the regulatory agency are eligible for reimbursement. This subdivision needs to be updated to clarify that such costs are ineligible.
5. **Section 2812.2(e)(19)** - The 1996 amendments (SB 562) to Health and Safety Code section 25299.57, subdivision (j), added regulatory technical assistance as an eligible cost reimbursable from the Fund. The existing regulations need to be updated to clarify that these costs are ineligible if incurred prior to the effective date of the statutory amendment.
6. **Section 2812.2(e)(20)** - The 1999 amendments (SB 665) to Health and Safety Code section 25299.57, subdivision (j), placed a limit of \$3,000 per occurrence on regulatory technical assistance costs. The existing regulations need to be updated to specify that the SWRCB may not reimburse regulatory costs in excess of \$3,000 per occurrence.
7. **Section 2812.2(e)(21)** - Senate Bill 562 added Health and Safety Code section 25299.57, subdivision (j), which allows regulatory technical assistance as a cost eligible for reimbursement from the Fund. The proposed definition of regulatory technical assistance includes assistance with completing and filing claims and reimbursement requests. Some claimants, however, have interpreted regulatory technical assistance to include the costs of resubmitting an application or reimbursement request that the claimant initially had filed incorrectly. These costs are unnecessary and are not eligible for reimbursement.
8. **Section 2812.2(e)(22)** - Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (j), to make costs of regulatory technical assistance eligible for reimbursement from the Fund. The proposed definition of regulatory technical assistance includes assistance with completing and filing claims. These costs are ineligible under the existing regulations, and thus, the existing regulation needs to be updated.

The existing regulation also states that costs associated with completing and filing of appeals are ineligible for reimbursement. The SWRCB interprets "appeal" to include a petition to the SWRCB. The existing regulation needs to be updated to reflect this interpretation by referring to both appeals and petitions.

Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2812.2(e)(1)** - The proposed regulation allows reimbursement of attorneys' fees incurred to provide regulatory technical assistance. Although attorneys' fees are not eligible for reimbursement under the existing regulations, this revision recognizes that attorneys often handle Fund claims for their clients and that regulatory technical assistance costs should be eligible for reimbursement even if an attorney provides the assistance. Reimbursement of attorneys' fees to provide regulatory technical assistance is only allowed to the extent the costs are otherwise eligible, and are necessary and reasonable in light of the work done.
 2. **Section 2812.2(e)(15)** - The original provision concerning the ineligibility of costs associated with obtaining the services of contractors or consultants has been deleted because it is inconsistent with regulatory technical assistance costs that are now eligible for reimbursement pursuant to Health and Safety Code section 25299.57, subdivision (j).
 3. **Section 2812.2(e)(16)** - The proposed regulation identifies as ineligible the added costs of implementing a corrective action alternative that is not the most cost-effective alternative to achieve cleanup levels identified as necessary by the regulatory agency. The SWRCB has developed regulations to implement the most cost-effective remedial alternative (found in California Code of Regulations, title 23, division 3, chapter 16, article 11). This subdivision makes clear that the Fund's reimbursements are limited to activities consistent with article 11.
 4. **Section 2812.2(e)(17)** - The proposed regulation identifies as ineligible the costs of corrective action incurred to clean up a site to levels exceeding the cleanup levels identified as necessary by the regulatory agency. SWRCB may only pay a claimant's reasonable and necessary costs, and the costs of cleaning up a site to levels exceeding the regulatory agency's directives are unnecessary.
 5. **Section 2812.2(e)(19)** - The proposed regulation identifies as ineligible the costs of regulatory technical assistance costs incurred prior to January 1, 1997. Costs of regulatory technical assistance were not eligible until Senate Bill 562 became effective on that date.
 6. **Section 2812.2(e)(20)** - The proposed regulation indicates that regulatory technical assistance costs included in a reimbursement request received by the Fund on or after January 1, 2000, and in excess of \$3,000 per occurrence are not eligible for reimbursement from the Fund. On January 1, 2000, SB 665 took effect and amended Health and Safety Code section 25299.57, subdivision (j)(1) to prohibit the SWRCB from reimbursing a claimant for regulatory technical assistance costs in excess of \$3,000 per occurrence. Therefore, for reimbursement requests received on or after January 1, 2000, the SWRCB will review the regulatory technical assistance costs subject to the limits in SB 665. The regulation is a reasonable interpretation of the statute.
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7. **Section 2812.2(e)(21)** - The proposed regulations prohibit reimbursement of costs associated with filing an application or reimbursement request to the extent the costs are incurred in response to a finding of noncompliance with the Fund's application or reimbursement requirements. This provision encourages a claimant to comply with Fund requirements early in the process, which ultimately will save both the claimant and the Fund time and resources. Further, if a claimant fails to comply with the Fund's requirements, it should not receive reimbursement for subsequent costs of coming into compliance.
8. **Section 2812.2(e)(22)** - The language disallowing costs associated with completing and filing claims has been deleted because these costs may be eligible as regulatory technical assistance costs pursuant to Health and Safety Code 25299.57, subdivision (j).

The proposed regulation continues to prohibit the reimbursement of costs associated with submitting an appeal, and clarifies that the costs associated with a petition to the SWRCB are ineligible. The proposed regulation does not prohibit the reimbursement of costs associated with a request for review of a staff decision by the Fund Manager as regulatory technical assistance. The proposed regulations define regulatory technical assistance to include assistance with completing and submitting a claim application and reimbursement requests to the Fund. The Fund Manager is familiar with and directly involved in the day-to-day workings of the Fund. Accordingly, regulatory technical assistance includes completing and submitting a request for review of a staff-level decision on eligibility or reimbursement to the Fund Manager because the Fund Manager is part of the Fund. An appeal to the Division Chief or a petition to the SWRCB, on the other hand, involves a request for a review of a Fund decision by an individual or individuals who are not directly involved in the day-to-day administration of the Fund. Costs for such review are not included within the allowable costs of regulatory technical assistance because regulatory technical assistance is limited to assistance with requests to the Fund.

SECTION 2812.3. DOUBLE PAYMENT

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2812.3(c)** - The existing regulations prohibit a claimant from receiving a double payment on account of any corrective action cost. A claimant receives a double payment when it receives a payment for the same costs from both the Fund and another source. For example, this issue often arises when a claimant sues a defendant, such as another potentially responsible party, over contamination resulting from a release from an underground storage tank and the parties subsequently settle the litigation. The SWRCB has directed Fund staff to determine whether the settlement payment was intended to pay for the same costs of corrective action that the Fund would otherwise reimburse. The existing regulations do not identify the SWRCB's procedures for determining whether a claimant who has received compensation from other sources has received a double payment. These procedures are set forth in the precedential SWRCB Orders WQ 96-04-
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UST, *In the Matter of the Petition of Champion/LBS Associates Development Co.*, and WQ 98-05-UST, *In the Matter of the Petition of Cupertino Electric, Inc.*

2. **Section 2812.3(d)-(e)** - Even though the regulations generally prohibit double payments to a claimant, the regulations have always recognized that another person may incur costs on behalf of a claimant or advance costs to a claimant. When an agreement between the parties requires the claimant to remit any reimbursement from the Fund to the person paying on behalf of the claimant or advancing costs to the claimant, then the Fund does not treat the reimbursement as a double payment.

In Senate Bill 665, the legislature clarified the circumstances when the SWRCB may reimburse costs that another person has incurred on behalf of a claimant or advanced to a claimant. Specifically, the legislature affirmed the Fund's existing practice and established a new requirement for reimbursements involving costs paid by an insurance company. In order to reimburse costs paid by an insurance company, for any claim issued a letter of commitment after June 30, 1999, the insurance contract must expressly coordinate benefits with the Fund. The regulations must be modified to incorporate this change to the underlying statute.

3. **Section 2812.3(f)** - The existing regulations do not reflect the SWRCB's practice, as set forth in the precedential SWRCB Orders WQ 96-04-UST, *In the Matter of the Petition of Champion/LBS Associates Development Co.*, and WQ 98-05-UST, *In the Matter of the Petition of Cupertino Electric, Inc.*, of bearing a fair share of a claimant's costs incurred to obtain a settlement or judgment for corrective action costs that the Fund would otherwise reimburse. The existing regulations need to be updated to reflect the SWRCB's practices as established in its precedential orders.

Specific Purpose and Necessity of the Proposed Regulations

The section concerning double recovery has been moved from section 2812.2, subdivision (b). The original section concerning reimbursement limitations has been moved to section 2812.5.

1. **Section 2812.3(c)** - In accordance with the precedential SWRCB Orders WQ 96-04-UST and WQ 98-05-UST, when a claimant recovers funds through a settlement agreement, Fund staff must consider whether the claimant already has been compensated for costs that the Fund would otherwise reimburse in order to avoid making a double payment to the claimant. Proposed subdivision (c) establishes the SWRCB's procedures for determining whether a claimant who has received compensation (such as a settlement payment or a reduced real property purchase price for contaminated property) from other sources has received a double payment.

Absent an express allocation of the settlement monies in the settlement agreement, the Division will base its determination regarding the purposes of the compensation on the terms of the settlement agreement or underlying complaint. Even when the evidence supports a finding that all or a portion of settlement monies are for corrective action, the

Division will review the claimant's documentation of actual, ascertainable and nonreimbursable costs to which the settlement payment reasonably may be attributed in order to reduce (or "offset") the amount of money that is determined to be a potential double payment. Typically, the Division will not allow an offset for the claimant's attorneys' fees paid to resolve the litigation unless the claimant could have recovered attorneys' fees in the underlying litigation. Attorneys' fees are not generally recoverable absent statutory authorization or evidence of an agreement between the parties providing for their payment.

2. **Section 2812.3(d)-(e)** - Senate Bill 665 clarifies the circumstances when an insurance company may incur costs on behalf of a claimant or advance costs to a claimant without violating the double payment prohibition. (Health & Saf. Code, § 25299.54, subd. (g).) The legislature's changes grandfather those claims that had a letter of commitment prior to June 30, 1999, provided the claimant is required to reimburse the insurer for any costs the insurer paid while awaiting reimbursement from the Fund. For claims after June 30, 1999, the SWRCB must analyze the insurance contract to ensure that the contract (1) explicitly coordinates benefits with the Fund, (2) requires the claimant to maintain eligibility with the Fund, and (3) requires the claimant to reimburse the insurer for costs paid by the insurer while awaiting reimbursement from the Fund. Section 2812.3(e) of the regulations reflects these changes
3. **Section 2812.3(f)** - When a claimant obtains a settlement or judgment for eligible corrective action costs, another party has paid costs that the Fund would otherwise reimburse. Drawing on the common law common fund doctrine, the SWRCB has determined in precedential SWRCB Orders WQ 96-04-UST and WQ 98-05-UST that it is equitable to recognize the benefit that a claimant has obtained for the Fund when the claimant recovers money for corrective action costs that the Fund would otherwise reimburse. The amount that the Division has determined to be a potential double payment under subdivision (c) represents the benefit to the Fund. The SWRCB has directed the Fund to bear a fair share of a claimant's legal costs to obtain the benefit for the Fund.

Accordingly, proposed subdivision (f) establishes procedures for the Fund to bear a fair share of a claimant's costs of obtaining a settlement payment or judgment for eligible corrective action costs. The Division first must calculate the Fund's fair share of the claimant's costs to obtain the settlement proceeds or judgment. The Fund's fair share shall be equal to the lesser of either (1) the claimant's actual legal costs to obtain the settlement proceeds or judgment in proportion to the ratio of the costs the Fund would otherwise have reimbursed to the total settlement or judgment amount, or (2) 30 percent of the benefit to the Fund.

In those instances when the actual legal fees and costs determine the Fund's fair share (see (1) above), the SWRCB has determined that it is appropriate to fix the Fund's share based on the ratio of the Fund's benefit to the claimant's total recovery. A claimant's settlement may include both costs the Fund would have paid and other damages (such as lost profits); however, the invoices for the attorneys' fees and costs would not clearly

distinguish between attorneys' fees that reduced the Fund's reimbursement and attorneys' fees that were incurred solely to the claimant's benefit. As a result, the proposed regulation determines the Fund's fair share to be the actual, total attorneys' fees and costs reduced in proportion to the ratio of the costs the Fund would otherwise have reimbursed to the total settlement or judgment amount. For example, if the benefit to the Fund represented 40 percent of the claimant's total recovery, the Fund would pay 40 percent of the attorneys' fees and legal costs.

In the remaining fair share cases, the SWRCB chose 30 percent as an appropriate contribution based on an analysis of the above-mentioned orders. In addition, 30 percent is a percentage commonly used by the courts in common fund cases.

The Division will then deduct the fair share amount from the amount the Division has determined to be a potential double payment. This is advantageous to the claimant because the amount that the Fund staff considers to be a double payment is reduced and the amount that the claimant can receive from the Fund is increased. The proposed regulation incorporates the procedures established in the above-mentioned SWRCB orders.

In addition, proposed subdivision (f) prohibits the Fund from bearing a fair share of the costs if the person paying the monies to the claimant is eligible to file a claim against the Fund and has not waived its ability to file a claim. In this situation, the paying party may file a third party compensation claim against the Fund for the monies it has paid to the original claimant. Accordingly, there is no benefit to the Fund because the Fund must reimburse the paying party's eligible costs.

Finally, proposed subdivision (f) prohibits the Fund from bearing a fair share if the claimant has already been wholly compensated for its costs. Otherwise, the claimant would receive a windfall if it has already been compensated for all of its costs and then receives a common fund contribution from the Fund.

SECTION 2812.5. REIMBURSEMENT LIMITATIONS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2812.5(a)** - Senate Bill 989 increased the amount the SWRCB may reimburse a claimant by an additional \$500,000 per occurrence for costs incurred by a claimant pursuant to Health and Safety Code section 25299.57 (governing corrective action costs and regulatory technical assistance costs). The additional \$500,000 must be incorporated into the regulation limiting reimbursement from the SWRCB.
 2. **Section 2812.5(d)** - Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (k) to allow a claimant to file a claim for a reopened site. The existing regulation regarding reimbursement limitations needs to be updated to reflect existing law.
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Specific Purpose and Necessity of the Proposed Regulations

The original language regarding the submission and receipt of claims has been moved to section 2812.7 for organizational purposes. The provision concerning reimbursement limitations has been moved from section 2812.3.

1. **Section 2812.5(a)** – Modifying the regulations to specify the additional \$500,000 the SWRCB may reimburse for corrective action and regulatory technical assistance costs for each occurrence is necessary so the regulations do not conflict with the Health and Safety Code.
2. **Section 2812.5(d)** - Proposed subdivision (d) limits the amount of Fund reimbursement on a site reopened pursuant to Health and Safety Code section 25299.57, subdivision (k). Reimbursement on a reopened site is only available to the extent that the previous corrective action costs for the same site do not exceed \$1 million (less the claimant's level of financial responsibility). This revision is in accordance with the governing statute, which limits Fund reimbursement to \$1 million per occurrence less the amount of financial responsibility.

SECTION 2812.8. DISQUALIFICATION OF CLAIMS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Health and Safety Code section 25299.55 requires a claimant to make a sworn verification of the claim and certification of the costs it has incurred. Existing section 2812.6 allows the SWRCB to disqualify a claim at any time if the SWRCB finds that the documents the claimant has submitted to the Fund contain a material error and the error was a result of the claimant's intentional misrepresentation. Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (a)(2) to provide additional direction to the SWRCB if the claimant's application contains fraudulent information or a misrepresentation. The regulations need to be updated to reflect this amendment.

Specific Purpose and Necessity of the Proposed Regulations

The proposed regulation has been moved from existing section 2812.6. The regulation has been revised, in accordance with Health and Safety Code section 25299.57, subdivision (a)(2), to allow the SWRCB to disqualify a claim if the claimant makes a misrepresentation to the Fund.

SECTION 2813. CREATION OF PRIORITY LISTS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Because the initial priority list was created in 1992, the existing regulation concerning the creation of the initial priority list is unnecessary.

Specific Purpose and Necessity of the Proposed Regulations

The existing regulation concerning the creation of the initial priority list has been deleted because it is unnecessary. The section now contains a description of the procedures for creating priority lists that are adopted by the SWRCB at least annually. These procedures were originally contained in section 2813.1, and have been rewritten for clarity. The revisions are not intended to materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

SECTION 2813.1. EFFECT OF PLACEMENT ON PRIORITY LIST

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

1. **Section 2813.1** - The original section 2813.1, subdivision (f) is duplicative and unnecessary.
2. **Section 2813.1(c)** - Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (k) to allow the SWRCB to pay a claim for a site that has been reopened. The regulation needs to be updated to reflect existing law.

Specific Purpose and Necessity of the Proposed Regulations

1. **Section 2813.1** - Portions of original section 2813.1, concerning the creation of subsequent priority lists were moved to section 2813. The original section 2813.1, subdivision (c) regarding deficiencies in a claim has been moved to section 2813.3. The new section 2813.1, concerning the effect of a claim's placement on the priority list, has been moved from section 2813.2. The original section 2813.1, subdivision (f) has been deleted to eliminate unnecessary and redundant provisions.
 2. **Section 2813.1(c)** - Pursuant to Health and Safety Code section 25299.57, subdivision (k), proposed subdivision (c) establishes the procedures for processing payment of a claim for a site that has been reopened. If the original claim has not been issued a letter of commitment, then the claim on the reopened site shall be placed on the priority list with the same priority class and rank as the original claim. If the original claim has been issued a letter of commitment, then the reopened site will be issued a letter of
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commitment ahead of all other claims on the priority list. These revisions parallel the procedures in the governing statute.

SECTION 2813.3. REMOVAL FROM THE PRIORITY LIST; SUSPENSION AND REJECTION OF CLAIMS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Section 2813.3(b) - Existing section 2813.4, subdivision (b), requires the Division to issue a notice of intended removal before removing a claim from the priority list. A claimant has 30 days from the mailing of the notice to either correct the grounds that are the basis for removal from the priority list or to petition the SWRCB. The existing regulations do not afford a claimant the option of filing a request for review of a staff decision with the Fund Manager or filing an appeal with the Division Chief. The petition is deemed filed if it is placed in the mail within the 30-day period.

The existing regulation needs to be updated to give a claimant the opportunity to request review of a staff decision by the Fund Manager or file an appeal with the Division Chief. In addition, the existing regulation needs to be updated to reflect proposed changes in article 5, which require a claimant to file an appeal that is received by the proper party within the 30 day-period.

Section 2813.3(c) - Existing section 2813.4 permits the SWRCB to remove a claim from the priority list in certain situations, and a claimant may resubmit a claim after the claimant corrects the conditions that were the basis for the claim's removal from the priority list. The resubmitted claim is treated as a new claim. Effective January 1, 1997, Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (a)(2), to prohibit the SWRCB from revoking a determination of a claimant's eligibility, made pursuant to that paragraph, absent fraud or misrepresentation. The regulations need to be revised to distinguish between claims filed before Senate Bill 562's effective date of January 1, 1997, and those filed on or after that date. If a claim is filed before January 1, 1997, the SWRCB may bar the claimant from further participation in the Fund when the basis for the claimant's removal from the priority list is misrepresentation, fraud, or other misconduct.

Section 2813.3(d) - Effective January 1, 1997, Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (a)(2) to prohibit the SWRCB from revoking a determination of a claimant's eligibility, made pursuant to subdivision (a)(2), absent fraud or misrepresentation on the part of the claimant. The SWRCB may suspend a claim until the claimant corrects any deficiencies that are the basis for the suspension. The amendment provides that if a suspended claim has received a letter of commitment then the SWRCB will reinstate the claim once the deficiencies have been corrected and funds are available. The regulations need to be updated to incorporate these statutory amendments. Additionally, the statute is silent about suspension of a claim that has not yet received a letter of commitment.

Section 2813.3(e) - Effective January 1, 1997, Senate Bill 562 amended Health and Safety Code section 25299.57, subdivision (a)(2) to limit the SWRCB to revoking a determination of a claimant's eligibility, made pursuant to subdivision (a)(2), in the event of fraud or misrepresentation on the part of the claimant. The section needs to be updated to incorporate the statutory amendment.

Section 2813.3(f) - The existing regulations are silent about whether a claimant has the right to appeal the Division's decision to reject a claim before it is placed on the priority list.

Specific Purpose and Necessity of the Proposed Regulations

Section 2813.3(b) - The proposed regulation allows a claimant the opportunity to request review of Notice of Intended Removal by the Fund Manager or appeal the notice to the Division Chief in accordance with the proposed revisions to article 5. The proposed changes in article 5 also require the claimant to file an appeal that is received by the proper party within the 30-day period. Proposed section 2813.3 has been updated to reflect the proposed changes in article 5. Finally, the proposed regulation has been rewritten for clarity.

Section 2813.3(c) - The existing regulation (existing section 2814.3) establishes procedures for resubmittal of a claim that has been removed from the priority list. This regulation has been revised in proposed subdivision (c) to distinguish claims filed prior to January 1, 1997 from those filed on or after that date.

Section 2813.3(d) - Pursuant to Health and Safety Code section 25299.57, subdivision (a)(2), the proposed subdivision allows the Division to suspend a claim filed on or after January 1, 1997, until the claimant corrects the grounds for suspension of the claim. If a suspended claim has received a letter of commitment then the SWRCB will reinstate the claim once the deficiencies have been corrected and funds are available.

The statute is silent about suspension and reinstatement of a claim that is on the priority list (i.e., a claim that has not yet received a letter of commitment). The SWRCB has decided to parallel the procedures set forth in Health and Safety Code section 25299.57, subdivision (a)(2). Accordingly, for claims filed on or after January 1, 1997, the Division may suspend a claim that is on the priority list. When the claimant corrects the ground for suspension of the claim, the Division will give the reinstated claim a new priority ranking as of the date of reinstatement.

Section 2813.3(e) - Proposed subdivision (e) allows the SWRCB to revoke a determination of a claimant's eligibility and bar the claimant from further participation in the Fund in the event of fraud or misrepresentation on the part of the claimant. This revision incorporates the statutory amendment to Health and Safety Code section 25299.57, subdivision (a)(2).

Section 2813.3(f) - The proposed subdivision allows a claimant to appeal the Division's decision to reject a claim before the claim is placed on the priority list. This revision is in keeping with the SWRCB's authority to review any claim not paid.

ARTICLE 5. REQUEST FOR REVIEW, APPEAL, AND PETITION PROCESS

SECTION 2814. FUND MANAGER DECISIONS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The appeal and petition procedures can be confusing for claimants. In particular, there is some ambiguity in the existing regulations concerning the role of the Fund Manager in the review process.

Specific Purpose and Necessity of the Proposed Regulation

Division staff has established an informal review process by which a claimant may—but is not required to—request the Fund Manager to review a decision made by Division staff. The Division has found that this process often leads to an efficient and timely resolution of the disputed issues. Accordingly, the SWRCB proposes to include this process in the regulations as part of the review options available to a claimant.

The proposed section establishes a claimant's right to request review of a decision rendered by Division staff from the Fund Manager, and sets forth the procedures for requesting review of the staff decision. The procedures for obtaining a Fund Manager Decision parallel the procedures already established for a final division decision. The section concerning a claimant's appeal to the Division Chief has been moved to proposed section 2814.1 from existing section 2814..

A claimant is not required to request review of a staff decision from the Fund Manager before the claimant may appeal to the Division Chief. The claimant may appeal a staff decision directly to the Division Chief (see proposed section 2814.1, subdivision (a)). However, many disagreements over the Division staff's decision can be resolved at a lower level of review. By providing a process of review by the Fund Manager, many claimants may be able to resolve their issues more efficiently because the Fund Manager is familiar with and directly responsible for the day-to-day workings of the Fund.

SECTION 2814.1. FINAL DIVISION DECISIONS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations are unclear as to whether a claimant may appeal a staff decision directly to the Division Chief, without first requesting review from the Fund Manager.

The method of tolling the 30-day period within which a petition for SWRCB review must be filed is inconsistent with the method for filing petitions relevant to other programs of the SWRCB. Also, this method is administratively difficult to implement because the 30-day period begins when a claimant receives the Final Division Decision and it is often difficult to determine when the claimant has received the decision (despite the Division's use of certified mail).

Specific Purpose and Necessity of the Proposed Regulation

The proposed regulation sets forth the procedures for appealing to the Division Chief for review of a decision rendered by the Division staff or the Fund Manager. These procedures are currently contained in existing section 2814. The existing section 2814.1 concerning a petition for SWRCB review has been moved to section 2814.2.

Health and Safety Code section 25299.37, subdivision (c)(8)(A) permits a claimant to request review of any claim or portion of a claim not paid. Proposed section 2814.1, subdivision (a), allows a claimant to appeal directly to the Division Chief, without first requesting review by the Fund Manager. Consistent with the provisions of Health and Safety Code section 25299.37, subdivision (c)(8)(A), the Division Chief must render a decision within 30 days of the request for a Final Division Decision.

Proposed section 2814.1, subdivision (c), has been amended to change how the time period within which a claimant must file a petition for SWRCB review of a Final Division Decision is calculated. The SWRCB must receive the petition within 30 days of the date of the Final Division Decision. This change is consistent with regional water quality control board petition procedures and will help to harmonize, to the extent possible, the procedures for filing petitions relevant to the SWRCB's other programs. This change will also eliminate the problems associated with determining the date of a claimant's receipt of a Final Division Decision.

SECTION 2814.2. PETITION FOR BOARD REVIEW AND RESPONSE BY THE DIVISION CHIEF

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

A claimant may petition the SWRCB for review of a final division decision. The existing section 2814.1, subdivision (a)(3) requires a petition for SWRCB review to include the specific decision of the Division that the SWRCB is requested to review. This regulation needs to be amended so that it is clear that the "specific decision" is indeed, the Final Division Decision. Also, the existing regulation requires the Division to file a response to the petition. In most cases, however, the Division has determined that it is unnecessary to file a response.

Specific Purpose and Necessity of the Proposed Regulation

This section has been moved from existing section 2814.1 and the existing section 2814.2 has been moved to section 2814.3. Proposed section 2814.2, subdivision (b)(3) requires the claimant to submit a copy of the Final Division Decision that the SWRCB is requested to review. This amendment clarifies that the claimant must have complied with the appeal procedures and sought and obtained a final division decision before petitioning the SWRCB for review.

Proposed section 2814.2, subdivision (e) gives the Division the discretion to file a response to a claimant's petition for review. The existing regulation requires the Division to file a response to a petition. In most cases, however, the Division has determined that it is unnecessary to file a response. Giving the Division the discretion to respond to a petition will enable the Division to use its resources in a more efficient manner.

SECTION 2814.3. DEFECTIVE PETITIONS

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations are organized in a manner that can make them difficult to follow. For example, certain sections or subdivisions, which logically belong together, are arranged with dissimilar sections or subdivisions.

Specific Purpose and Necessity of the Proposed Regulation

This section has been renumbered from section 2814.2. The subdivision regarding the SWRCB's right to consider any petition upon its own motion has been moved to section 2814.4, subdivision (e) for organizational purposes.

SECTION 2814.4. ACTION BY THE BOARD

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulation is redundant with respect to the criteria for granting review of a petition and is unclear as to what standards govern the gathering of relevant evidence, and the conduct of an evidentiary hearing.

Health and Safety Code section 25299.37, subdivision (c)(8)(B), requires the SWRCB to decide a petition within 90 days of receiving the petition. Existing section 2814.3, subdivision (d) states that a petition shall be deemed denied if the SWRCB does not act on the petition within 90 days. It is not the SWRCB's practice, however, to deny a petition that it has not acted on within 90 days. Instead, the SWRCB's practice is to continue to review the petition. The regulation needs to be updated to reflect the SWRCB's practice.

As amended by Senate Bill 665, Health and Safety Code section 25299.56, subdivision (c), will afford the SWRCB 270 days after submission of a complete petition to hold an evidentiary hearing. The existing regulations do not distinguish between deadlines for evidentiary hearings and other SWRCB actions. The regulations must therefore be revised to reflect the legislation that will take effect on January 1, 2000.

Specific Purpose and Necessity of the Proposed Regulation

The existing regulation permits the SWRCB to refuse to review a petition if it “fails to raise substantial issues which are appropriate for or require Board review.” If a petition “requires” review by the SWRCB, it is appropriate for review. Therefore, the SWRCB believes that the language “or require” is redundant. Further, regulations governing review by the SWRCB of decisions by a regional water quality control board dictate that the SWRCB may fail to review a petition if it “fails to raise substantial issues which are appropriate for Board review.” For consistency, the SWRCB intends for the same standard to govern reviews of petitions under article 5.

Proposed section 2814.4, subdivision (c) states that an evidentiary hearing shall be conducted in accordance with California Code of Regulations, title 23, division 3, chapter 1.5, article 2. This amendment identifies the same regulations that already govern the SWRCB’s adjudicative proceedings.

In addition, the provision that a petition will be deemed denied if the SWRCB does not act on it within 90 days has been deleted. It is not the SWRCB’s practice to deny a petition that it has not acted on within 90 days; instead a petitioner may elect to await the SWRCB’s decision. The SWRCB may continue to review a petition after the 90-day period because the expiration of the review period does not divest the SWRCB of jurisdiction to hear the petition. (See *California Correctional Peace Officers Ass’n v. State Personnel Bd.* (1995) 10 Cal.4th 1133 [43 Cal.Rptr.2d. 693].) Further, the SWRCB’s regulations in article 5 grant the SWRCB discretion to consider a petition on its own motion.

Proposed section 2814.4(d) indicates that if the SWRCB begins an evidentiary hearing process, the SWRCB will act on a petition within 270 of receiving a complete petition. This change is necessary to ensure the regulations conform with amendments to Health and Safety Code section 25299.56, subdivision (c), that will take effect on January 1, 2000.

SECTION 2814.5. BOARD WORKSHOP AND MEETING

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

The existing regulations do not contain procedures for the SWRCB’s consideration of a proposed SWRCB order concerning a claimant’s petition for review at a public workshop

or SWRCB meeting. The applicable procedures should be outlined in the SWRCB's regulations.

Specific Purpose and Necessity of the Proposed Regulation

The proposed regulation sets forth procedures for the SWRCB's consideration of a proposed order in response to a petition for review of a Final Division Decision at a public workshop prior to the SWRCB's formal action at a SWRCB meeting. At the workshop, the SWRCB may invite comments on the proposed order. The proposed regulation also contains procedures by which a petitioner or interested person may request permission to submit factual material not contained in the record before the Division Chief. The proposed regulation is consistent with regional water quality control board petition procedures and will help to harmonize, to the extent possible, the procedures for filing petitions relative to other programs of the SWRCB.

ARTICLE 6. PETITIONS FOR SITE CLOSURE

Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Proposed Regulation is Intended to Address

Senate Bill 562 added Health and Safety Code section 25299.39.2 to address closure of a UST site. Senate Bill 665 further refined the UST site closure process to expand the range of persons who may avail themselves of the UST site closure petition process. The statutory amendments allow a UST or residential tank owner or operator, or other responsible person, who believes that the corrective action plan for a site has been satisfactorily implemented, but who has not been granted site closure, to petition the SWRCB for review of the case. The statute does not provide details concerning the petition process and existing regulations do not address this process.

Specific Purpose and Necessity of the Proposed Regulations in Article 6

SECTION 2814.6. FILING OF PETITION

The proposed regulation sets forth the prerequisites to filing a petition pursuant to Health and Safety Code section 25299.39.2, subdivision (b). Specifically, the owner or operator or other responsible person must remove free product to the maximum extent practicable, and request and be denied closure from the regulatory agency overseeing the site cleanup.

The proposed regulation also identifies the information that must be contained in the petition for review of a case for site closure. This information includes the name and address of the petitioner, the site address, a copy of the decision denying closure (or a statement by the petitioner that the agency failed to act on the petitioner's request for closure), and a statement of the reasons why the petitioner believes the case should be closed. This information will provide the SWRCB with a means of identifying the petitioner and the site, and with confirmation that the petitioner has sought site closure from the regulatory agency and is eligible to petition for review. The regulation also

requires a petitioner to submit the names and addresses of the current site owner, adjacent owners, and responsible parties. This information will enable the SWRCB to notify persons who may have an interest in the petition and give them an opportunity to respond.

The proposed regulation also identifies the actions the SWRCB will take after reviewing the petition, record, and responses to the petition. The SWRCB's authority to act and the scope of permitted actions after reviewing the petition stem from Health and Safety Code section 25299.39.2, subdivision (b), effective January 1, 2000. Depending on whether the case is under the jurisdiction of a regulatory agency that is implementing a local oversight program, the SWRCB may either close the case or remand it for action consistent with the SWRCB decision, or recommend closure to the regulatory agency. The SWRCB also may deny the petitioner's request for closure or a recommendation to close the case, or refuse to review the request if it fails to raise issues appropriate for review.

SECTION 2814.8. BOARD WORKSHOP AND MEETING

The proposed regulation sets forth procedures for the SWRCB's consideration of a proposed order in response to a petition for site closure at a public workshop prior to the SWRCB's formal action at a SWRCB meeting. At the workshop, the SWRCB may invite comments on the proposed order. The proposed regulation also contains procedures by which a petitioner or interested person may request the SWRCB to allow it to submit factual material not contained in the record already before the Board. The proposed regulation is consistent with petition procedures for SWRCB review of actions by the regional water quality control boards and will help to harmonize, to the extent possible, the procedures followed by the SWRCB in processing petitions filed with the SWRCB.
